UNITED
NATIONS

CRC

Convention on the
Rights of the Child

Distr.
GENERAL

CRC/C/SR.405
1 October 1997

Original: ENGLISH

COMMITTEE ON THE RIGHTS OF THE CHILD

Sixteenth session

SUMMARY RECORD OF THE 405th MEETING

Held at the Palais des Nations, Geneva,
on Thursday, 25 September 1997, at 3 p.m.

Chairperson: Miss MASON

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GE.97-18313 (E)

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS OF STATES PARTIES (agenda item 4) (continued)

Initial report of Australia (CRC/C/8/Add.31; CRC/C/Q/AUS/1) (continued)

1. At the invitation of the Chairman, Mr. Moss, Mr. McDonald, Ms. Calvert, Ms. Stanford and Ms. Sheedy (Australia) resumed their places at the Committee table.

2. The CHAIRMAN invited the delegation to reply to questions that had been raised that morning.

3. Mr. MOSS (Australia), replying to Mr. Kolosov's question on statistical data, said his delegation had not intended to imply that the only accurate data were those obtained from the latest census. There were, of course, other means of collecting data and those would be utilized in the preparation of Australia's next report.

4. Ms. CALVERT (Australia), replying to a question from Mrs. Palme on the procedure for determining criminal responsibility, said that, in cases involving 10 to 14 year-olds, the defence would be entitled to request evidence from psychologists to determine whether or not the child had understood that its action was wrong. All the States and territories required an adult to be present in a supporting role when the interrogation of a child was taking place.

5. Mrs. PALME said she had understood the Australian delegation to say that an investigation into that issue was currently being carried out and would eventually culminate in an official report. Would that investigation include participation by competent children's bodies or would it be dealing chiefly with the legal aspects of the question?

6. Mr. MOSS (Australia) said he was not able to answer that question immediately, but undertook to provide information to the Committee at a later stage.

7. Ms. SHEEDY (Australia) said another question raised had been whether it was not a contradiction in terms to have exemptions in anti-discrimination legislation while conducting campaigns to raise public awareness of human rights and of complaint-handling mechanisms. The Government believed it was very important to educate the public generally about Australia's laws and did not regard it as a contradiction that those laws contained certain exemptions. As she had already pointed out, the exemptions in question reflected the difficulties of particular States and did not affect the wide range of protection offered by the anti-discrimination laws. However, a process was currently under way to reduce the number of exemptions.

8. Another question had been whether the provisions on loss of nationality under Australia's Citizenship Act constituted a breach of the Convention. She emphasized that, under the Act, a child would not automatically lose his or her citizenship upon loss of citizenship by the responsible parent. The Government believed that the Act was in line with the requirements of

articles 3 and 8 of the Convention and did not breach article 2. In fact, the decision maker was given discretion in the matter and would take account of the provisions of the Convention, as well as of the child's own particular circumstances. In any event, no child could be deprived of citizenship if the effect would be to render him or her stateless.

9. On the question whether Australia's failure to provide paid maternity leave constituted a breach of article 18, paragraph 2, of the Convention, she pointed out that Australia had entered a reservation to article 11, paragraph 2 (b), of the Convention on the Elimination of Discrimination against Women requiring States parties to introduce maternity leave with pay or with comparable social benefits. Again, special circumstances had given rise to the need for that reservation and Australia did not consider that it was in breach of article 18, paragraph 2, of the Convention on the Rights of the Child, which called simply for "appropriate assistance" to be given to parents and legal guardians. In Australia, such assistance was provided through a variety of measures and did not rely solely on paid maternity leave. Those measures included a number of payments and allowances, notably a maternity allowance, as well as special parenting programmes.

10. Ms. STANFORD (Australia), referring to the question whether specific programmes for indigenous people had the effect of marginalizing them and whether it would be better for such programmes to target all members of the community, said that in fact both types of programme were on offer. In remote areas with a preponderance of Aboriginal people, the programmes would be tailored to meet those people's particular needs, but, in urban communities, there would be more broadly based programmes. Integration was encouraged in all areas which included both indigenous and non-indigenous people.

11. In reply to the question on the number of homeless children in Australia, she said that recent research by the Australia Institute of Family Studies had indicated that, in 1994, there had been some 21,000 homeless young people between the ages of 12 and 18 in the country. To help such young people, the Government had launched a supported accommodation programme which provided both youth refuges and women's refuges for the homeless. In 1998, there would be an evaluation of that programme. In 1996, a special task force had been set up to look into the causes of youth homelessness and to determine a framework for a response to the problem. Twenty-six pilot projects had been launched to try out various early intervention strategies and to help young people at risk to re-engage in family life, in work and in education and training. That programme was also to be evaluated in 1998.

12. Mr. MOSS (Australia), replying to a further question, said that Australia intended to ratify the Hague Convention on intercountry adoption before the end of the year.

13. Ms. CALVERT (Australia), replying to the question of how the situation of an adopted child was monitored, said that it was customary for some follow-up visits to be made after an adoption, but generally an adopted child was not seen as being any different from a non-adopted child. No special monitoring process would therefore be applied unless there had been actual evidence of neglect or abuse.

14. Mr. MOSS (Australia), referring to the question whether legal aid was available for children not only during court proceedings, but also during the investigation phase, said that legal representation and, if necessary, legal aid for that representation would be provided when a child was being questioned. As already stated, it was also a standard requirement in all courts that a supporting adult should be present during the questioning of a child.

15. He was not able to say whether the campaign against racism and the civic education campaign contained specific references to the Convention, since neither of those campaigns had yet been finalized.

16. Ms. CALVERT (Australia), replying to the question on how the Convention was reflected in Australian law, cited the example of New South Wales, which was reviewing its child protection legislation and was conducting an extensive consultation process. As part of that consultation process, a discussion paper had been issued which made a number of references to the Convention. She anticipated that the new legislation would come before Parliament the following year.

17. On the question of how social workers, police and child-care workers were given training in the values of the Convention, direct references to the Convention were made in training courses. Trainees were also encouraged to reflect on their own value-base, since an understanding of how authority and power were exercised within the family was needed when interventions had to be made. She would be glad to provide members of the Committee with more detailed information on request.

18. With regard to separate representation, the current review of child protection legislation in New South Wales was likely to result in recommendations for change. A children's legal centre existed in New South Wales at which children due to appear in court were able to instruct a solicitor or have a social worker give instructions on their behalf. That arrangement was viewed very positively by the judiciary and it enabled children to make a more positive input to the court process than in the past.

19. Mr. MOSS (Australia) said it had been asked whether, under the system of separate representation, priority was given to the best interests of the child or to the child's own views. While the representative would primarily take account of the child's best interests, he would also as far as possible take the child's views into account.

20. Ms. CALVERT (Australia) said that, while education in parenting was important, Australia believed it was far more effective if provided alongside a range of family support services, which would help to build up parents' self-esteem. Programmes in that area therefore combined an educative and a supportive function.

21. Ms. STANFORD (Australia) said that, following research into the beneficial effects of home visiting in other countries, the Government had decided to launch a national pilot programme on the subject and the report on that programme had made it possible to create a framework for evaluation. Visiting was not organized in isolation, but in close coordination with

doctors, teachers and social workers in the community, thus enabling families to receive a comprehensive service which would enable them to improve their parenting skills.

22. Mr. MOSS (Australia), replying to comments made earlier by the Chairperson, emphasized that programmes designed to deal with homelessness and suicide among young people were not confined to the Aboriginal community, but were intended to apply to the community as a whole. He also noted that the Australian social security system provided benefits for children of unemployed and employed parents alike: no distinction was made on the basis of employment status.

23. Ms. STANFORD (Australia) said that the Chairperson had raised a number of questions on how uniformity and consistency was ensured throughout the various States and territories in the provision of health services for children, such as immunization. As had already been pointed out, there was a range of national coordination mechanisms to ensure that national health and social services programmes were implemented nationwide and not just in one area. One such mechanism was the Australian Health Ministers' Council. In 1997, the Council had given priority to public health partnership, national women's health programmes, national diabetes strategies and immunization. The Government was providing generous funding to implement the seven-point plan known as "Immunization Australia", aimed to provide full immunization to more than 90 per cent of children up to two years of age and near-full immunization at school entry age. As an incentive to parents, the plan was linked to the provision of maternity allowances and included a national community education strategy. "Child Protection Week", celebrated every September in Australia, had immunization as one of its major themes.

24. Mr. McDONALD (Australia), replying to questions on how development assistance intended for the welfare of children was monitored, said that Australia's overseas aid programme was administered by an autonomous body, the Agency for International Development. The programme responded to needs identified by the recipient countries themselves via governmental or non-governmental organizations in those countries and it therefore relied to some extent on the monitoring and quality assessment capacity of those organizations. A report currently before Parliament made a number of recommendations concerning the programme, to which the Government would be responding in the near future.

25. In reply to a question from Mrs. Karp as to whether Australia insisted that the recipient Government should apply a certain proportion of the aid it received to children, he said that the aid covered a wide range of activities in the social, health and education sectors, which would include components related to children. In any programme specifically targeting children, such as those administered by the Office of the United Nations High Commissioner for Refugees (UNHCR), the monitoring mechanisms already in place would ensure that the target groups received the benefit.

26. Mrs. KARP said that, in some cases, countries needed to be encouraged to invest in children's issues; a donor country was well placed to persuade a recipient country to invest in infrastructure in such a way as to have a beneficial effect on children.

27. Mr. MACDONALD (Australia) said that Australia did have a continuing negotiating process in place with its principal cooperation partners, in which it promoted the major aims of its aid programme, namely, reducing poverty and ensuring social and economic progress. Like most international development agencies, AusAID had a gender equality programme, which had begun some years previously with the women in development process; considerable emphasis was also placed on ensuring that women and children were targeted in its development policy, since women and children were among the principal victims of poverty in the developing world.

28. Mrs. KARP said that a question to which she had not yet received an answer was the extent to which the principles of the Convention were reflected in family law, which had the status of federal law. Was any review of the law contemplated to ensure compatibility with the Convention?

29. Another question she wished to ask again was whether there were any official guidelines or a code of practice to assist welfare officials and help them reflect the Convention in their work. While the establishment of the National Children and Youth Law Centre was to be applauded, it was still at an experimental stage and could not be considered representative of conditions throughout the country.

30. Despite the information provided by the Australian delegation, it was still difficult to understand the need for a separate adviser, since it was surely the function of the judge to decide where the best interests of the child lay. Action by welfare officials was presumably also guided by the best interests of the child, taking the child's views into account. Hence the separate adviser appeared to be duplicating work already done. Furthermore, although the child's views might be listened to, they might not necessarily be reflected in the action taken. What was being done to ensure genuine representation of a child's views?

31. Mrs. PALME said that the maternity allowance for a birth was paid for a very short period only - six weeks. Only some 85 per cent of mothers received the allowance, so presumably means testing had determined that the remaining 15 per cent did not require such support. In view of the fact that agencies such as WHO and UNICEF recommended breastfeeding for a period of at least six months, she asked whether Australia was considering extending the period covered by the maternity allowance.

32. Mrs. OUEDRAOGO asked the reason for continuing high child mortality, despite government action, in some population groups such as Aborigines and Torres Strait Islanders. Was it because such groups preferred to follow traditional medical practices or because they had less access to medical care? What was the situation with regard to drinking water supply, sanitation and environmental protection in remote districts?

33. What action was being taken by the Australian Government to bring practices such as female genital mutilation to an end? She drew attention to the level of international action underway for that purpose elsewhere in the world and asked what contribution Australia was making to the effort.

34. What was being done at the national level to bring family planning and human reproduction services to population groups in remote areas with a high population density? She asked about the attitude of the Australian Government towards abortion. Was it legal and, if so, who could avail of it? Did pregnant teenage girls seek abortion, did they have access to welfare services and what was their situation with regard to continuing their education?

35. Information would be welcome on the programmes in place to combat sexually transmitted diseases in general and HIV/AIDS in particular. Did persons found to be HIV positive suffer discrimination? Did control programmes reach the most remote areas? It would be useful to know the attitude of the indigenous population towards HIV/AIDS, since some population groups had little awareness of the disease. Australia's work in funding programmes for the control of AIDS in many countries was greatly appreciated.

36. The Australian Government was to be congratulated on launching a project for work on indicators of well-being in children. If any results of the work were available, she would appreciate receiving them.

37. Mr. RABAH, noting that Australia gave refuge to people fleeing conflict from many areas, asked whether refugee children suffered any discrimination with respect to education, government services and medical care. Were they able to acquire Australian nationality and, if so, under what conditions?

38. He understood that Australia was facing a rising crime wave and asked what protection was afforded to offenders under the age of 18. What measures were applicable when a juvenile offender was detained by the police and what legal, welfare and other assistance was provided? What period of pre-trial detention was permissible? What information was provided to young offenders and what measures of rehabilitation were available to them? Were any measures available for separating juveniles from adults outside places of detention?

39. He had not yet received a reply to a request made at the previous meeting for statistics relating to street children and for information on how they were treated or any alternative care they received.

40. Mr. KOLOSOV, drawing attention to tables G4 and G5 of the report, said that Australian overseas aid for education appeared to be directed primarily to tertiary education, which received some 80 per cent of the total amount. That indicated that children in primary and secondary education were not a prime target for such assistance. Noting that the data in the tables did not apply beyond 1994, he asked whether there had been any change of policy since then for a stronger focus on the educational needs of younger children.

41. The report had given extensive coverage to the legislation applicable to children in difficult circumstances. He had been struck by the extent to which important levels of action were left to the discretion and subjective judgement of the official involved, as evidenced by the extensive use of the word "may" in the relevant texts. Such a practice relied heavily on the competence, honesty and objectivity of all officials dealing with children. Perhaps the legislation should be more specific in its provisions and not give so much responsibility to individual human beings who might make mistakes or

take sides. It could be a reason why the number of Aboriginal children in detention was so high. Although the law was not discriminatory in itself, it could lead to discriminatory attitudes on the part of persons dealing with children.

42. Noting that the information contained in paragraph 1384 of the report could not be more recent than December 1995, the date of publication of the report, he asked what was the present attitude of the Australian Government to raising the age of enlistment in the army to 18. He understood that the attitude of the Australian delegation to the Working Group on the optional protocol on the involvement of children in armed conflict, a protocol initiated by the Committee, was currently less favourable to such action than it had been.

43. Mrs. PALME, repeating a question put earlier, asked what the current position was with regard to the introduction of legislation in the States and territories to ban female genital mutilation. She understood that, so far, only Western Australia and Queensland had taken such steps.

44. With respect to child prostitution, child pornography and the sale of children (art. 34 of the Convention), she asked whether Australia was currently applying the instrument of implementation to which it had been a party at the World Congress on the Commercial Sexual Exploitation of Children.

45. Mrs. OUEDRAOGO said that the report appeared to indicate regional disparities in the education system. Although primary education was compulsory, incidental costs made it difficult of access to low-income groups. What action was the Government taking to make such education universally accessible? What was the reason for differing levels of budget allocation to education in different States and territories? There appeared to be a need to strengthen the education system in some States and territories in view of quality of education, low school attendance rates and high drop-out rates. Information in her possession indicated that children from the least privileged sectors of the population were the least likely to advance far in secondary education, with a very high drop-out rate, especially for boys, in the eleventh and twelfth years of schooling.

46. Mrs. KARP said that, where there was a high rate of suicide in children and young people, hospitalization in mental institutions often tended to be used to cope with the problem. Unfortunately, that often left the child with a stigma that lasted throughout life. How was the problem being tackled in Australia, which appeared to have undertaken a considerable reform of its mental health services for young people? Did children under 16, the age of medical consent, have any say in the matter of hospitalization, especially when it had the consent of their parents? In the face of an objection by the child, were there any procedures to allow the child's case to be heard?

47. On the educational front, she would like to know whether schoolchildren had any say in disciplinary proceedings or any right to be heard when there was a question of expulsion or temporary suspension. Were children involved in decisions on curricula or in any other aspects of school life?

48. She asked why it had not been considered necessary to set a minimum age for child labour, especially in States and territories where there was no prohibition on paid employment during school hours by a child in compulsory education. Was Australia a party to ILO Convention No. 138 on child labour?

49. She understood that child prostitution was prohibited and child prostitutes liable to prosecution. That meant, however, that such children were regarded as perpetrators rather than as victims. Perhaps Australia should review its policy and concentrate on the rehabilitation of such children instead. Had Australia introduced into law the recommendation of the World Congress on the Commercial Sexual Exploitation of Children that the consumer of sexual services should be liable to prosecution even in the case of a child over the age of 16, the age of sexual consent?

50. Had any investigation been made into police brutality within the juvenile justice system, especially with regard to Aborigines and Torres Strait Islanders? She asked what system was in place for dealing with complaints of police brutality and whether any statistics were available on the results of investigations into such complaints. She understood that Aborigines and Torres Strait Islanders were more likely to be refused bail than other Australians. Did that mean they were subject to different conditions of bail?

The meeting was suspended at 4.25 p.m. and resumed at 4.35 p.m.

51. Mr. MOSS (Australia) said that Australian family law fully reflected the provisions of the Convention. Major reform of that legislation had been undertaken in recent months to focus attention even more firmly on the best interests of the child and bring its provisions even more closely into line with those of the Convention. The reforms had, in fact, been the result of a review to ensure compatibility with the Convention.

52. Ms. CALVERT (Australia) said that many of the States and territories had guidelines for protective intervention that applied to the statutory agencies and the police and other agencies that might make a referral to those statutory agencies. Although such guidelines were unlikely to make specific reference to the Convention, they would certainly reflect its spirit and provisions. Any changes to legislation made as a result of the review currently under way would also be reflected in the guidelines.

53. The National Children's and Youth Law Centre was not the only establishment of its kind; there were other such centres to be found across Australia. However, not all areas had access to a centre, although all children did have access to legal advice under the duty solicitor scheme. Children never appeared in court without access to a solicitor.

54. Mr. MOSS (Australia) said the Australian Government had no plans at present to review the six-week maternity allowance, which had always been intended as a short-term benefit.

55. A number of questions had been asked about health and well-being, with particular reference to indigenous peoples. Since it would take time to assemble the material to provide a comprehensive response, he hoped the Committee would agree to the answers being sent to it at a later date.

56. On the matter of female genital mutilation, he drew the Committee's attention to the comprehensive review of the situation provided in the written reply to question 30 of the list of issues.

57. Ms. CALVERT (Australia) said that the best source of information on the welfare of children was the Australian Institute of Health and Welfare. It published an annual report which gave details on cases of suspected abuse or neglect and their outcome. The report was included in the supplementary information provided to the Committee.

58. Mr. MOSS (Australia) said that detailed information on refugee children was given in the written replies, in response to question 35 of the list of issues.

59. A number of questions had been asked about juvenile justice. He had already explained that legal representation was available to everyone in the Australian justice system and had given details of the situation regarding legal aid. Furthermore, although Australia recognized the desirability of separating children from adults in jails, it maintained its position on the reservation to article 37 (c) of the Convention for the reasons stated earlier, namely, the remoteness of certain areas of the country. Since the duration of detention for children before charges were brought varied between one State and another, information on the subject would be forwarded to the Committee in due course.

60. Ms. CALVERT (Australia) said that it was not possible to compile accurate statistics on street children in Australia. When such children were found, the care and protection services were brought in to cater for their needs in terms of accommodation, health care, education and support. Specific projects aimed at street children included one centred around the Kings Cross area in Sydney, where street children tended to congregate. Under the project, locals were encouraged to report sightings of street children so as to ensure the early intervention of the relevant services; that had proved to be the most effective approach.

61. Mr. MacDONALD (Australia), replying to questions on Australian overseas development assistance, said he agreed that a high proportion of such aid was aimed at tertiary education and thus did not directly benefit children. The Government intended to redress the balance and allocate more funds to primary level education in future. A large part of funds currently available were used for scholarships in tertiary education in Australia and reflected the high costs of that sector. The Australian Government had a comparative advantage in offering such scholarships to recipient Governments that it might not necessarily have at the primary educational level.

62. Mr. MOSS (Australia), referring to comments on the wide margin of discretion exercised with regard to children in difficult circumstances, said that discretion was often exercised in individual cases to prevent unfair

decisions and the application of rigid rules. It was worth noting that all such decisions were subject to appeal or review by independent authorities so as to reduce the possibility of bias or error. It had been suggested that there might be a link between the exercise of discretion and the very high proportion of offenders of indigenous origin in the justice system. While admittedly there was an element of racism in any system, it was simplistic to assert that racism was an overriding factor in the problem of the large number of indigenous offenders. That was a complex matter with a wide range of social and other causes which made it difficult to handle. The Government was, however, making an effort to overcome the problem, as borne out by recent meetings at the ministerial level on the number of deaths among Aboriginals held in custody.

63. Mr. CONROY (Australia), replying to questions on children in armed conflict, said that Australia strongly supported the draft optional protocol on involvement of children in armed conflicts and had been active in the relevant working group since 1995. With regard to article 1 of the draft optional protocol, Australia was in favour of 18 as the minimum age for direct and indirect participation in hostilities. As to article 2, in the past, Australia had allowed the voluntary recruitment of children aged 16 in the armed forces. However, that policy had been reviewed by the present Government and the age limit had been raised to 17. The reason 17 was preferred to 18 was that, in Australia, children left school at 16 or nearly 17 and the armed forces afforded the opportunity to start a career with an apprenticeship as a cook or technician. Those apprentices were, however, not allowed to participate in armed conflict.

64. Ms. STANFORD, replying to questions concerning child prostitution and sexual exploitation, said that Australia had participated actively in preparations for the World Declaration Against Commercial Sexual Exploitation of Children, which it had signed in 1996. Moreover, the first anniversary of the signature of the Declaration had been marked by a press release from the Ministry for Health and Family Services. Many of the mechanisms recommended in the Declaration were already in place in Australia, including laws against child prostitution, legislation on prosecution for offences committed by Australian nationals abroad and the establishment of a national council for the prevention of child abuse. Work was also under way on the elaboration of principles to regulate the contents of on-line services such as Internet. The Prime Minister had taken steps to ensure the cooperation and support of all States and territories in the area. Meetings had been held at the federal level with relevant departments and non-governmental organizations concerning their role in the implementation of the Declaration. Further meetings were scheduled shortly with a view to developing a suitable framework for such activities and preparing a national agenda by the year 2000.

65. Mr. MOSS (Australia) said that information in reply to questions on education could be found in the "National Report on Schooling in Australia 1995", which was among the supplementary material to the Australian report made available to the Committee.

66. Ms. CALVERT, referring to concerns expressed about the forcible hospitalization of children, said that each State had legislation setting out the requisite procedures. For instance, in New South Wales, certain forms

must be completed and the signatures of two doctors were required. Such decisions must be reviewed by a mental health review tribunal and, in any case, a child could only be held initially for 72 hours. In order to extend that period, the matter had to be brought before the tribunal, where the patient must be represented. Although the medical profession certainly considered it very unwise for a child to refuse treatment, on rare occasions that might occur for children under 16 with the parents' consent. Scheduling legislation must be applied for forcible hospitalization and in general doctors were reluctant to hold children against their will. There were also health care complaint units of which staff and patients could avail themselves.

67. Children did participate in disciplinary proceedings in education and, in most States, expulsion was a fairly complex procedure. In New South Wales, talks were held with the parents, the child concerned and the school counsellor, but there were no formal hearings. Children quite often applied to children's legal centres, which would take up the expulsion issue for them. In Australia, children were intimately involved in school life and decisions affecting their education, in particular through the student representative councils she had described earlier.

68. Ms. SHEEDY (Australia), replying to questions about the absence of a minimum age of employment, explained that the Australian Government regarded work outside school hours, provided it was not harmful to children, as a valuable experience with a positive effect on children's development. That, of course, must be distinguished from exploitative labour, which was quite unacceptable. Vocational training was well documented in the report and was considered educational rather than exploitative by the Australian Government.

69. The situation with respect to compulsory education in the different States was described in detail in the report (paras. 1098 et seq.). Children were expected to attend school during school hours, although exceptions were made in the event of home schooling and children working in the entertainment industry.

70. Australia was not party to ILO Convention No. 138 (Minimum Age Convention, 1973), whose requirements were found to be too prescriptive. It was, however, actively involved in negotiations on a new convention, which would focus on eliminating extreme and exploitative child labour.

71. Ms. CALVERT (Australia) said that, in Australia, child prostitution was regarded as a form of abuse and any cases thus came under the competence of the care and protection services. The police would nonetheless deal with the criminal aspects. Prostitution involving children aged under 12 was deemed a criminal act in all States and the police would take the necessary action against the consumer.

72. In connection with police brutality and its investigation, a two-year inquiry into police corruption had recently been completed in New South Wales. It had resulted in significant changes in the way the police investigated allegations of misconduct. All such investigations were now overseen by the ombudsman: police had to report on the results of the investigation and whether the complainant was satisfied; alternatively, the ombudsman could

carry out the investigation herself. A police integrity commission had also been established to look into more serious complaints. Information on the situation in other States could be forwarded to the Committee at a later date.

73. With regard to bail conditions for Aboriginal juvenile offenders, she described a number of programmes set up in New South Wales at the community and local levels to provide services such as accommodation for Aboriginals who risked being refused bail on the grounds that they were homeless or who needed care and support during the period they had to remain in contact with the law. Such initiatives reflected general trends throughout the Federation.

74. The CHAIRPERSON said that she had not received a reply to her earlier question on initiatives undertaken in respect of indigenous children. More importantly, she requested clarification on legislation introduced recently in several States for the mandatory sentencing of juveniles in detention, where they were apparently subjected to punitive treatment aimed at shaming them into submission. That hardly seemed to be in keeping with the concept of human dignity embodied in the Convention.

75. Also, she understood that children applying for Australian residency must meet fairly stringent health criteria, and that made it likely that disabled children would be separated from their families. Similarly, asylum seekers were apparently sometimes given the choice of staying in the hostile environment of detention centres with their families or being placed in foster care. How could such policies be regarded as being in the best interests of the child?

76. Lastly, she requested confirmation that, on release from such centres, child asylum seekers received no income support, health care or legal assistance for a considerable period of time unless they so requested.

77. Mr. MOSS (Australia) said that the Chairperson could find information on the issues she had raised in respect of indigenous juveniles in a report by the Human Rights and Equal Opportunities Commission, a copy of which had been made available to the Committee. The Government was currently examining some of the recommendations in that report and the Committee would be informed of any decision as soon as possible.

78. Mandatory sentencing arrangements were in operation only in Western Australia and the Northern Territory. In the latter, the relevant laws had entered into force in 1997 and applied to serious property offences committed by 15 to 16-year-olds, as persons over 17 were treated as adults. Upon a second or subsequent conviction for such an offence, a person in that age group had to be placed in custody in a juvenile detention centre for a minimum of 28 days. The Government considered that the laws in question did not breach the Convention and that it was necessary to take account of the particular conditions in the Northern Territory, which made effective policing difficult. Furthermore, the best interests of the child had to be balanced against those of the wider community and it was clear that the worrying level of juvenile property crime in the region had not been reduced by the previous sentencing regime. While reformation and social rehabilitation continued to be the main goals of the penal system, the Government believed that they could not be achieved unless penalties designed to make offenders aware of the

wrongfulness of their conduct were imposed and that, in the case of young recidivists, the best method of doing so was for the courts to impose short-term minimum sentences in a suitable juvenile detention centre.

79. The CHAIRPERSON asked whether a similar system also applied to adults.

80. Mr. MOSS (Australia) replied that it did and described the penalties incurred.

81. In Western Australia, the 1994 Young Offenders Act provided for mandatory sentencing for a third serious offence, especially home burglary, and applied only if the person had served at least two previous terms of imprisonment and there was a likelihood of him committing another crime shortly after his release from detention. The application of the three strikes rule, which resulted in a minimum 12-month sentence, was subject to the issue of a special court order against which an appeal could be entered. Sentence review was possible after six months. The offender had to be given an opportunity to be heard personally or through a legal representative. No one had yet been sentenced under that provision. The rationale behind it was that mandatory sentencing was the only adequate response to Western Australia's high rate of home burglaries, which often left victims in a state of trauma. Again, the Government did not think that the laws infringed the Convention.

82. He had no information about the refusal to admit asylum seekers to Australia on health grounds and would provide details later.

83. Ms. SHEEDY (Australia) said that children could be released temporarily from detention into the community if appropriate care and welfare arrangements could be made and, above all, if release was considered to be in the best interests of the child.

84. Refugees, humanitarian migrants and their immediate family members were exempt from the two-year waiting period for eligibility to social security payments. Illegal immigrants, regardless of whether they were adults or children, were detained. Dependent children were given the same immigration status as their parents. Unaccompanied minors without a valid visa who subsequently applied for refugee status were then granted provisional visas and could remain in the community, since it was held that they had gone through screening procedures. Immigrant detention centres had accommodation suitable for families with children and provided all the requisite services. Particular attention was given to the welfare and safety of children and schooling was compulsory up to 15 years of age. All centres provided English classes for adults that were also attended by many of the older children. Unaccompanied minors received special care and peer support systems were encouraged. Care management systems existed in each centre and were regularly reviewed in order to study both action taken and future requirements.

85. The CHAIRPERSON asked whether the high incidence of incarceration of indigenous children in the Northern Territory and Western Australia was accounted for by the sheer size of the Aboriginal population there.

86. Mr. MOSS (Australia) said that it was.

87. The CHAIRPERSON invited the members of the Committee to comment on the replies by the Australian delegation.

88. Mr. RABAH asked whether a 16-year-old offender who had been sentenced to three years' detention in a reformatory would have to serve the last year in an adult jail. He hoped that all programme targets would be rapidly achieved and that Australia's wealth and ample resources would be used for the benefit of its children.

89. Mrs. OUEDRAOGO thanked the Australian delegation for the fruitful discussion. Although Australia had many programmes designed to guarantee the development, survival and protection of children, there were some shortcomings with regard to the provision of educational and health services for some sectors of society. She recommended that the Convention should be given wider publicity. A coordinating mechanism or ombudsman was required at the federal level to monitor and evaluate policy. The issue of corporal punishment should be discussed in greater depth because the Australian delegation's arguments had been unconvincing. The minimum age of criminal responsibility and of employment ought to be reviewed and laws which allowed discriminatory treatment in some exceptional circumstances likewise needed to be re-examined.

90. Mrs. PALME said that she had found the report tremendously inspiring. She had also been encouraged by the delegation's excellent teamwork. Achievements in Australia in the past year and plans for the future indicated a real will for change. She was, however, still worried about the dignity of the child if corporal punishment were to be inflicted, but had detected a possible shift in the delegation's position on that matter. She hoped that the age of criminal responsibility would be raised, maternity leave extended and further progress made on the question of genital mutilation. Such improvements were contingent on democratic dialogue within the country.

91. Mrs. KARP commended the Australian Government on its report and replies. She acknowledged the advantages stemming from the country's diversity, but still advocated the introduction of a unified national policy on the implementation of the Convention. Welcoming the fact that Australia recognized the need to deal with many urgent problems, she considered that the proper implementation of the Convention would trigger a process of social development which would involve all sectors of society and might produce some solutions. In that connection, she advised the adoption of a holistic approach to the interpretation of the Convention which would ensure respect for human dignity in all aspects of everyday life and also requested the delegation to publicize the dialogue held with the Committee in Geneva.

92. Mr. KOLOSOV said that the Australian Government was taking its obligations under the Convention very seriously. The ratification of that instrument had, moreover, led to a discussion in society about amendments to legislation in order to solve existing problems. He trusted that, by the time the next report was submitted, substantial improvements would have been made along those lines. He would be making very precise recommendations on several subjects when the concluding observations were drawn up. He hoped that all possible means would be used to publicize the Convention.

93. Mr. MOSS (Australia) thanked the Committee for its constructive proposals, of which the delegation had taken due note. It looked forward to receiving the Committee's concluding observations.

94. The CHAIRPERSON emphasized that the process of reporting to the Committee entailed an ongoing evaluation of the way in which a country was fulfilling the obligations it had undertaken when it had signed and ratified the Convention. The Committee understood the legal reasons why the Convention could not be incorporated into internal law in Australia, but considered that the Australian Government should continue its review of existing legislation to ensure that it complied with the Convention and that the interests of the child were not given less consideration than had hitherto been the case.

The meeting rose at 6 p.m.